

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10323 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SAIYADALI @ SAIYADU MAHMADALI LEVATAWALA

Versus

COMMISSIONER OF POLICE SURAT CITY

Appearance:

MS DR KACHHAVAH for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner herein challenges the order of preventive detention dated 31st August, 1998, made by the Commissioner of Police, Surat City, under the powers conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The grounds of detention furnished to the petitioner along with the order of detention suggest that two offences punishable under sections 452, 326 and 114 IPC, and under sections 323, 326, 114 and 504 IPC and section 135 of the Bombay Police Act have been registered against the petitioner on 7th November, 1997 and 26th June, 1998. In both the cases, the petitioner was arrested and was released on bail. Besides, there are two more incidents which have been brought to the notice of the concerned police, which disclose the nefarious activities carried on by the petitioner. The Detaining Authority has recorded his subjective satisfaction and has held that inspite of the petitioner's release on bail, the petitioner has continued his nefarious activities. It is, therefore, alleged that the petitioner is a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are prejudicial to the maintenance of public order.

The order of detention has been challenged on two grounds alone. Ms. Kachhavah, the learned advocate appearing for the petitioner has contended that neither of the incidents, whether registered or unregistered, disclose the petitioner's activities which would affect the public order. All the offences are directed against the individuals and at the most could be said to be a problem of law and order. She has further contended that though the offences have been registered as far back as on 7th November, 1997 and 29th June, 1998, the order of detention has not been made until 31st August, 1998. This clearly indicates that the petitioner's activities are not prejudicial to the maintenance of public order. In support of her contention, she has relied upon the judgment of Supreme Court in the matter of MUSTAKMIYA JABBARMIIYA SHAIKH VS M.M.MEHTA, COMMISSIONER OF POLICE & ORS (1995 {2} GLR, 1268).

I have perused the grounds of detention and the supporting material. Neither of the FIR refers to any of the activities of the petitioner which may be prejudicial to the public order. Only in their statements, the witnesses have said that on their refusing to surrender to the demand of the petitioner, they were beaten on the public road and people had gathered who were dispersed by the petitioner by wielding an open knife. The people had to rush for safety and momentary breach of tranquility prevailed in the area. In the matter of Mustakmiya (supra), similar incidents were subject matter of

scrutiny by the Hon'ble Supreme Court. Similar incidents were relied upon by the Detaining Authority, wherein the allegation was that the said petitioner had beaten the witnesses in public and threatened the crowd gathered there by aiming a revolver, the people had to run for safety. The court thereupon observed "They were the incident directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquility of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardise the public order and incite people to make further breaches of the law and order which may result in subversion of the public order ".

In view of the above judgment, it must be held that the incidents narrated by the concerned witness refer to an offence against an individual and lacks the element of disturbing the even tempo of life or the public tranquility. In my view, therefore, the subjective satisfaction recorded by the Detaining Authority in respect of the petitioner's activities being prejudicial to the maintenance of public order is vitiated, and consequential order of detention also is vitiated.

For the aforesaid reasons, the petition is allowed. The impugned order dated 31st August, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI